

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1046 of 1998

in

SPECIAL CIVIL APPLICATION No 1040 of 1998

with

LETTERS PATENT APPEAL No 1150 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VALJIBHAI MAGANLAL SALVI

Versus

MANAGING DIRECTOR

Appearance:

PARTY-IN-PERSON for Appellant
MR PARESH UPADHYAY for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 09/12/98

ORAL JUDGEMENT

#. Both these appeals are ordered to be admitted. Mr. Paresh Upadhyay, learned counsel for the respondents appears and waives service of notice of admission on behalf of the respondents. In the facts and circumstances of the case, the matters are taken up for final hearing today.

#. Both these appeals arise out of a common judgment and order passed in SCA No. 1040 of 1998 and 1041 of 1998 respectively on July 2, 1998.

#. The appellant was the original petitioner. He filed the above two petitions before the learned Single Judge for appropriate relief prayed therein. It appears that the petitions were posted for hearing on June 30, 1998. It is not in dispute that the appellant (petitioner in above SCAs) was appearing as party in person and had not engaged advocate. On 30th June, 1998, he was not present. In the first Para of the oral order, the learned Single Judge as observed as under;

"This group of Special Civil Applications filed by Shri V.M. Salvi, Deputy Executive Engineer, Gujarat Water Resources Development Corporation Ltd., was called out on 30-6-1998. The petitioner is appearing party-in-person. He did not appear on the said date. Therefore, it was adjourned to 2.7.1998. He is not present even today. It is not necessary for this Court to give notice to the petitioner for hearing of the case. Once the petitioner chooses to appear as party in person it is for him to take care to appear in the matter as and when the case is placed on the board. In view of the this, I am left with no option but to proceed with the matter."

#. It is stated before us that on 30th June, 1998, the appellant retired from service. He, therefore, could not remain present. Since the appellant had not engaged any advocate and as he was not present on June 30, 1998, he was not aware of next date of hearing which was fixed on 2nd July, 1998.

#. On 2nd July, 1998 as observed in the judgment, the matters came to be dismissed.

#. In our opinion, it would be in the interest of justice if the order passed by the learned Single Judge is set aside and the petitions are remanded to the

learned Single Judge to decide them in accordance with law after hearing the appellant-petitioner on their own merits. We may state that we are not expressing opinion on merits of the matters and as and when they will be placed for hearing, the learned Single Judge will decide them in accordance with law. Both the appeals are accordingly allowed to above extent only. In the facts and circumstances of the case, no order as to costs.

(C.K.Thakkar,J.)

Date : 9-12-1998 (A.L.Dave, J.)

*Kailash